

**DATE:** February 15, 2005

**To:** Board Committee on Member Oversight;  
Board Committee on Communications & Bar Relations (Informational)

**FROM:** Office of Certification,  
Office of Legal Services, Access and Fairness Programs

**SUBJECT:** Lawyer Referral Services, Proposed Revisions to the Rules and Regulations  
Pertaining to Lawyer Referral Services - Request for Authorization to Release  
for Public Comment

### **EXECUTIVE SUMMARY**

This item requests authorization to send out for public comment proposed revisions to the Rules and Regulations Pertaining to Lawyer Referral Services, which include Minimum Standards for a Lawyer Referral Service in California.

For further information on this item, contact Mary Yen at (415) 538-2573 or [mary.yen@calbar.ca.gov](mailto:mary.yen@calbar.ca.gov) or Patricia Lee at (415) 538-2240 or [patricia.lee@calbar.ca.gov](mailto:patricia.lee@calbar.ca.gov) .

### **INTRODUCTION**

In 1987, the Legislature enacted Business and Professions Code section 6155 to govern individuals and entities that operate for the purpose of referring potential clients to attorneys. Since July 1, 1988, such individuals and entities have been required to register with the State Bar and obtain from the State Bar a certificate of compliance with rules and regulations for lawyer referral services ("LRS's"). Section 6155 contains provisions intended to provide public protection. Thus, for example, the combined charges to the potential client by the LRS and the attorney to whom the potential client is referred must not exceed the total cost that the client would normally pay if no referral service were involved. Other client protection provisions include restrictions on ownership and operation of the LRS, and requirements for each lawyer who receives referrals from LRS's, such as possessing an errors and omissions insurance policy with statutorily mandated minimum amounts of coverage. (Attachment A)

Two important functions must be performed by individuals or entities in order to be performing certifiable LRS activity in California. Many so-called referral providers do not fall within the statutory requirements of section 6155 because they do not provide *both* services. The first function they must perform is to help the client determine if the client's problem is truly of a legal nature by screening inquiries and referring the client to other service agencies when appropriate. The second, and perhaps more important, function of LRS's is to provide the client with an unbiased referral to an attorney who has experience in the area of law appropriate to the client's needs. Certified LRS's perform the second function through a system of rotational referrals to attorney panel members.

Business and Professions Code section 6155 requires the State Bar to formulate and enforce rules and regulations for certified LRS's. Section 6155 contains specific requirements for what must be in the rules and regulations. Among other things, the rules and regulations must establish minimum standards with provisions ensuring that panel membership is open to all qualified attorneys practicing in the geographical area served, and provisions that limit attorney registration and membership fees to reasonable sums. Currently, the rules and regulations of the LRS certification program are called the Rules and Regulations Pertaining to Lawyer Referral Services ("Rules").

The Rules were last amended in 1997. At that time, lawyer referral service matters were located in the Office of Legal Services. When the State Bar shut down in June 1998, only the most minimal mandatory certification functions could be maintained for the Bar's certified LRS's. After the Bar reopened in 1999, other basic services for LRS's were slowly brought back. Currently, various staff located in different State Bar offices perform the functions of certification, investigation and enforcement, and program development for certified LRS's.

Early last year, the LRS staff began reviewing the Rules for possible revision and update. Potential revisions were identified and then discussed with interested certified LRS's. Based on those discussions, which took place over a three month period, further modifications were made to the contemplated revisions. In October 2004, the proposed revisions were shared with all California certified LRS representatives who attended a national LRS conference held in San Diego. The result is that while no major revisions are proposed, tweaking the current rules appears to be appropriate.

## **PROPOSED AMENDMENTS**

Before 1997, two sets of rules governed the State Bar's LRS certification program. Formerly, rules called "Minimum Standards for a Lawyer Referral Service in California" were created in compliance with requirements contained in Business and Professions Code section 6155. A separate set of rules, called "Rules and Regulations Pertaining to the Certification and Renewal Fees for Lawyer Referral Services", dealt with other administrative features of the certification program. Effective January 1, 1997, the two sets of former rules were combined into one set of rules called "Rules and Regulations Pertaining to Lawyer Referral Services (Including Minimum Standards for a Lawyer Referral Service in California)". It is this one set of rules for which revisions are proposed.

The proposed amendments to the program's administrative rules combine both technical and substantive revisions. Proposed technical amendments include uniform use of terminology when referring to the State Bar and deletion of the former Board Committee on Legal Services and replacing it with a more generic reference.

Substantive revisions appear in Attachment B. They include the following:

1. Title and Rule 1. Modifying the title to be consistent with the title of rules and regulations of other State Bar programs, and deleting the term "minimum" in reference to standards for an LRS in California. Bar staff and the certified LRS's feel the word "minimum" has negative connotations and is not an accurate description because the Rules contain more than the minimum standards specified in section 6155. Although "minimum" will no longer be in the title, the specific "minimum standards" spelled out in section 6155 will be contained in the proposed Rules, and Rule 1 will reference the minimum standards.

2. Rule 10.5. Deleting the words “in his or her county” (as they refer to an LRS providing each client with an address and telephone number in the client’s county), and adding the words “and email address if any”. By deleting the words “in his or her county” and adding the LRS’s “email address, if any” prospective clients should have sufficient information to locate and communicate with the LRS’s of their choice, as well as to file complaints with the service. Also, in the field of advertisement there is a decreasing emphasis on traditional geographic boundaries. With the development of electronic forms of advertisement the public is able to access LRS information on the Internet outside of the LRS’s county.

3. Rule 11.2. Deleting the word “binding” from the fee arbitration provision. As currently written, rule 11.2 is inconsistent with requirements contained in the fee arbitration statute, Business and Professions Code section 6204(a). Deleting the word “binding” will bring the Rules into conformity with that statute without violating the spirit of the provision.

4. Rule 12.3. Expanding current requirements for subject matter panels to apply to general panels as well. While continuing to recognize the importance of and need for general panels, the addition closes a gap by requiring general panels to meet the same requirements as subject matter panels for establishing standards for participation.

5. Rule 18.3. Expanding the circumstances in which a confidential investigatory complaint may be made public. Currently, investigations are confidential until service of written notice of intent to revoke or suspend certification. The proposal would authorize the Board of Governors to order an investigation be made public.

## **FISCAL/PERSONNEL IMPACT**

None is anticipated.

## **IMPACT ON THE BOARD BOOK/ADMINISTRATIVE MANUAL**

None.

## **PROPOSED RESOLUTIONS**

Should the Board Committee on Member Oversight approve the request for authorization to release the proposed revisions to the Lawyer Referral Service rules and regulations for public comment, the following resolutions would be appropriate:

**RESOLVED** that the Board Committee on Member Oversight hereby authorizes staff to make available for public comment for a period of 90 days the proposed revisions to the “Rules and Regulations Pertaining to Lawyer Referral Services (Including Minimum Standards for a Lawyer Referral Service in California)”, in the form attached; and it is

**FURTHER RESOLVED** that this authorization for release for public comment is not, and shall not be, construed as a statement or recommendation of approval of the proposed item.